

**BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA**

In the Matter of:

**JAMES LOTTER**

Respondent.

Case No. 01/276

OAH No. N2003060836

**PROPOSED DECISION**

Administrative Law Judge Muriel Evens, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on September 10, 2003.

Elizabeth K. Conti, Commission Counsel, represented complainant Mark Krausse, Executive, Fair Political Practices Commission.

Respondent was present and represented himself.

The matter was submitted on September 10, 2003.

**FACTUAL FINDINGS**

1. Respondent James Lotter was a volunteer member of the Gualala Municipal Advisory Committee, a position appointed by the Mendocino County Board of Supervisors. Respondent served in that capacity from 1991 to July 2002.
2. As a member of the Gualala MAC, respondent was listed as a designated employee on the Conflict of Interest Code for the County of Mendocino, enacted pursuant to the provisions of Government Code Section 87302.
3. As a designated member of the Gualala MAC, respondent was required by the Conflict of Interest Code to file annual statements of economic interests with the Mendocino County Clerk, disclosing information about his reportable investments, business positions, interests in real property, and income during the preceding calendar year.
4. Prior to April 2001, respondent had filed all annual statements of economic interests on a timely basis.

5. In September 2000, respondent received confirmation of a diagnosis of prostate cancer. On November 27, 2000, respondent underwent heart bypass surgery, and thereafter embarked on a 12-week recovery period. Respondent served as an active member of the Gualala MAC during the period of January 1 through December 31, 2000, subject to medical absence in December 2000.
6. On or about February 8, 2001, respondent received a notice from the Mendocino Clerk-Recorder, informing him of his obligation to file an annual statement of economic interests by April 2, 2001, for the period January 1 through December 31, 2000.
7. On March 12, 2001, respondent attended the March monthly meeting of the Gualala MAC.
8. In mid-March 2001, respondent commenced prostate cancer treatment.
9. Respondent did not file his 2000 statement of economic interests by the April 2, 2001 due date. On or about April 4, 2001, respondent received a notice from the Mendocino County Clerk-Recorder informing him that his 2000 statement of economic interests, which was due on April 2, 2001, had not been received, and informing him of his obligation to file that statement by May 2, 2001, or the matter would be referred to the Fair Political Practices Commission for enforcement purposes.
10. On April 9, 2001, respondent attended the April meeting of the Gualala MAC.
11. Respondent did not file his 2000 statement of economic interests by May 2, 2001. On May 29, 2001, respondent was contacted by telephone by FPPC investigator Bonnie Swaim, regarding respondent's failure to file his annual statement of economic interests for the year 2000. Respondent informed Swaim that he had forgotten to file his 2000 annual statement.
12. On May 29, 2001, Swaim faxed to respondent Form 700 Statement of Economic Interests and applicable schedules. On May 30, 2001, respondent faxed to the FPPC his completed statement of economic interests for the year 2000. On May 31, 2001, respondent filed his completed statement of economic interest for the year 2000 with the Mendocino County Clerk-Recorder.

## LEGAL CONCLUSIONS

1. Findings 3, 69, 11 and 12 establish that respondent violated Government Code section 87300, timely filing of statement of economic interests.
2. While respondent suffered serious medical issues, he was able to function as a member of the Gualala MAC during the time he was notified of the need to file his annual statement of economic interests. There was no evidence respondent contacted the

Mendocino Clerk-Recorder or the FPPC to request an extension of time due to medical reasons. While respondent may have set different priorities for his time, the Government Code requires disclosure of certain financial affairs in a timely manner. Respondent did not do that.

3. Respondent argued that volunteers should not have to file the same disclosure statements as paid employees. However, whether paid or not, the work done by respondent and others can affect the lives of others through government action. There was no evidence of any exception in the law for unpaid/volunteer workers.

4. The Commission has the authority to fine violators \$5000. The purpose of a fine, under these circumstances is not to punish respondent as much as seek compliance with the law. The Commission seeks a fine of \$5000. That appears excessive, given no evidence that respondent had any actual financial conflict, or, for example, that he engaged in any fraud or deceit. Given that this was respondent's only violation and did not result from financial wrongdoing, a fine of \$500 should be sufficient to get respondent's attention.

#### ORDER

Respondent shall pay a fine of \$500.00 to the Commission within 30 days of the effective date of this decision.

DATED: 10/6/03



MURIEL EVENS

Administrative Law Judge  
Office of Administrative Hearings